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GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
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GREENVILLE, MAINE  
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WALTER E. WHITCOMB  
COMMISSIONER

# PERMIT

## DEVELOPMENT PERMIT DP 4948

The staff of the Maine Land Use Planning Commission, after reviewing the application and supporting documents submitted by Bay Communications II, LLC for Development Permit DP 4948, finds the following facts:

1. Applicant: Bay Communications II, LLC  
Attn: Mark Cook  
391 Oakland Street, 2<sup>nd</sup> Floor  
Mansfield, MA 02048
2. Date of Completed Application: July 16, 2014
3. Location of Proposal: Long A Township, Penobscot County  
Taxation Plan 01, Lot 1 (Part of);  
Cell Tower Coordinates: 45° 33' 02.19916"N; 068° 51' 34.74091"W
4. Zoning: (M-GN) General Management Subdistrict
5. Lot Size: 40,000 sf (lease)
6. Proposed Structures: Approximately 195' AGL (199' including antennas) tall self-supporting lattice telecommunications tower with a 6' x 12' modular platform for equipment cabinets

### Project Summary

7. On October 3, 2013, Bay Communications II, LLC submitted an application for a proposed approximately 195' AGL (199' including antennas) tall self-supporting lattice telecommunications tower with a 6' x 12' modular platform for equipment cabinets and provisions for future equipment platforms and shelters within a 100' x 100' fenced area located in the center of their 200' x 200'-40,000 square foot leased area. The proposed tower would have a designed "break point" at 100' AGL on the tower and would be located within the center of the 200' x 200' leased area. The tower base would be greater than 400' from Route 11 and any other public or private roadway. The proposed telecommunications facility is accessed via a proposed approximately 380 foot long by 10 foot wide gravel road from Route 11. The lease is located within the wooded 11,690 acre parcel owned by

Katahdin Forest Management, LLC. Currently, the land surrounding the leased area is utilized for commercial timber harvesting, which will continue. The proposed tower would not be lighted and would be neutral in color. The proposed construction is shown on plans prepared by Black Diamond Consultants, Inc. in 11 sheets, entitled BDC Project BC-08: sheet 1 dated 9/6/13; sheets 2, 5, 6, 7 & 11 dated 8/2/13; sheets 8, 9 & 10 dated 6/26/13 and sheets 3 & 4 dated 6/19/13.

8. The applicant has identified a significant gap in the Northeast Wireless network. The proposed height and location of the telecommunication tower is designed to provide adequate coverage across this gap in the wireless network. The applicant determined that the closest existing telecommunications tower to the proposed location is 7.86 miles away and as a result would not be able to provide coverage across the significant gap. The applicant's site selection process also considered utilizing topography, tree lines, vegetation and distance to create separation and visual buffers from water bodies and other areas that might be visually impacted by the tower. The applicant originally submitted a 2013 visual impact assessment that used photosimulation from several viewpoints. The Commission requested additional information, including an analysis of visibility within a 5 mile radius and a justification for the selection of viewpoints presented. The applicant then consulted with the land manager for Katahdin Forest company and a representative of the Passamaquoddy tribe to obtain local knowledge of the area, and reviewed available information such as the Wildlands Lake Assessment ratings. The applicant then submitted a July, 2014 visual impact assessment that included computer-generated viewshed mapping for a 5 mile study radius, a description of the basis for selection of viewpoints, results of a balloon test for selected viewpoints, and conclusions about visual impacts of the project. The study concludes that "the balloon was only visible from four locations, all near the Project site." These views are all from a public road, and not from a scenic viewpoint. A map, balloon test photos, and photo simulations for viewpoints with visibility are all provided.

### Agency Review Comments

9. After reviewing the proposal, the Maine Department of Inland Fisheries and Wildlife commented that their records indicate no occurrences of Rare, Threatened, or Endangered animal species within the project area. Canada lynx (*Lynx Canadensis*), a Species of Special Concern in Maine has been documented in the project area. The project is expected to have minimal effects to the species. There is potential for increased bird collisions with the construction of tall telecommunication towers. MDIF&W recommended that the applicant review the guidelines from "Partners in Flight" and consider design recommendations that limit bird mortality.
10. After reviewing the proposal, the Maine Natural Areas Program commented that there were no rare botanical features that would be disturbed within the project site.
11. After reviewing the proposal, the Maine Historic Preservation Commission concluded that the proposed undertaking will have no adverse effect on historic properties, as defined by Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA).
12. After reviewing the proposal, the Maine State Soil Scientist recommended that the applicant either build the road above the ground surface or utilize ditch turnouts frequently on steeper sections of the proposed road to minimize the amount of runoff that would reach Route 11. His preferred option

would be to have the road constructed above ground, which would not require deep ditches and ditch maintenance.

13. After reviewing the proposal, Penobscot Regional Communication Center requested co-location of their public safety communications on the proposed tower at the highest height possible, which would not interfere with telecommunication operation. The County would cover all installation costs, but requested free rent.

### **Commission Review Criteria**

14. Under the Provisions of Section 10.02, Definition #210 of the Commission's Land Use Districts and Standards, Utility Facilities are structures normally associated with public utilities, including communication facilities; and towers and related equipment.
15. Under the Provisions of Section 10.22,A,3,c,(23) of the Commission's Land Use Districts and Standards, utility facilities may be allowed within a (M-GN) General Management Subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S.A §685-B, and subject to the applicable requirement set forth in Sub-Chapter III.
16. Under the provisions of Sub-Chapter III, Section 10.24,3 of the Commission's Land Use Districts and Standards, The Commission shall approve no application unless adequate provision has been made for fitting the proposal harmoniously into existing natural environment in order to assure there will be no undue adverse effect on existing uses, scenic character, and natural and historic resources in the area likely to be affected by the proposal. Pursuant to 12 M.R.S.A. §685-B,4,(C), the Commission may not approve an application, unless adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to ensure there will be no undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal.
17. Under the provisions of Sub-Chapter III, Section 10.25,E,1 of the Commission's Land Use Districts and Standards; the design of proposed development shall take into account the scenic character of the surrounding area. Structures shall be located, designed and landscaped to minimize their visual impact on the surrounding area, particularly when viewed from existing roadways or shorelines. To the extent practicable, proposed structures and other intrusive development shall be placed in locations least likely to block or interrupt scenic views as seen from traveled ways, water bodies or public property. If a site includes a ridge elevated above the surrounding areas, the design of the development shall preserve the natural character of the ridgeline.
18. Under the provisions of Sub-Chapter III, Section 10.26, A, 2 of the Commission's Land Use Districts and Standards; the minimum lot size required for commercial, industrial, and other non-residential uses involving one or more buildings is 40,000 square feet.
19. Under the provisions of Sub-Chapter III, Section 10.26, D, 2 of the Commission's Land Use Districts and Standards; the minimum setbacks for commercial structures, including parking areas is 75 feet from the traveled portion of the nearest roadway and 25 feet from the side and rear property lines.

20. Under the provisions of Sub-Chapter III, Section 10.26, E of the Commission's Land Use Districts and Standards; the maximum lot coverage shall be 30% for all uses involving one or more buildings. Coverage shall be calculated by determining the percent of the lot covered by all structures including paved driveways, sidewalks, parking lots and other impervious structures.
21. Under the Provisions of Sub-Chapter III, Section 10.26,F of the Commission's Land Use Districts and Standards, for a structure set back at least 500 feet from a great pond, the maximum building height shall be 100 feet for commercial, industrial, and other non-residential uses involving one or more structures. Features of structures which contain no floor area such as chimneys, towers, ventilators and spires, and free standing towers and turbines may exceed the maximum height with the Commission's approval.

### **Discussion**

22. Visual Impact Analysis: The applicant has provided substantial information with which to evaluate potential visual impacts. Because this is a 199' tower, and because there were potentially sensitive resources in the area, such as water bodies with high scenic ratings, a 5 mile radius was warranted, but in reviewing viewshed mapping, local information, and field testing, the applicant was able to rule out visibility from sensitive resources. The primary areas of visibility are from a road in the immediate vicinity that does not have a particularly high scenic value. Because no night lighting is proposed, it was not necessary to consider the visual impacts of such lighting, and so no information about the area of potential effects or impacts of night lighting is presented. For these reasons, the visual information that is presented is substantial and adequate for the purposes of evaluating the proposed tower.
23. The facts are otherwise as represented in Development Permit application DP 4948, and supporting documents.

### **Based upon the above Findings, the staff concludes that:**

1. In accordance with Sections 10.22,A,3,c, (23) of the Commission's Land Use Districts and Standards, the proposed telecommunications tower with supporting equipment is an allowed use in an (M-GN) General Management Subdistrict.
2. In accordance with Sub-Chapter III, Section 10.24,3 and 12 M.R.S.A. §685-B,4,(C), the erection of the proposed telecommunication tower would not be expected to have an undue adverse effect on existing uses, scenic character and natural and historic resources in the area likely to be affected by the proposal. Specifically:
  - a. The parcel is currently actively utilized for commercial timber harvesting; this use would continue.
  - b. The potential undue adverse impacts to the scenic character have been minimized by siting the tower in a location that does not create visual impacts on sensitive resources, and by keeping the tower height below 200', therefore avoiding the need for FAA safety lighting. The visibility of the tower from route 11 is for a relatively short travel distance, in an area

with substantial screening by trees, and the tower will be a neutral color, further reducing impacts.

- c. The potential undue adverse impacts to natural resources have been minimized by limiting the amount of vegetation cutting to only that which is needed for the tower, supporting structures, ancillary equipment and access road, and by the location of the tower. No wetlands, rare or unique botanical features, inland wading bird and waterfowl habitat, deer wintering areas or inland fish habitat would be directly affected. Further, appropriate erosion control measures would be utilized for the access road and there are no nearby streams or wetlands in the vicinity of the project. Lastly, as a condition of approval, recommendations from the Maine State Soil Scientist and Inland Fisheries and Wildlife would be included as permit conditions.
  - d. There are no undue adverse impacts to historic resources. A review of the proposal by the Maine Historic Preservation Commission indicates that the proposed undertaking will have no adverse effect on historic properties.
3. Sub-Chapter III, Section 10.25,E,1 of the Commission's Land Use Districts and Standards, the proposed tower has been located and designed to minimize visual impacts from the adjacent Route 11 and the water bodies located within 5 miles of the project site. The proposed tower is not located on a ridgeline.
  4. In accordance with Sub-Chapter III, Section 10.26, A, 2 of the Commission's Land Use Districts and Standards, the proposed lease area is at least 40,000 square feet.
  5. In accordance with Sub-Chapter III, Section 10.26, D, 2 of the Commission's Land Use Districts and Standards; the proposed tower and accessory structures meet the minimum setbacks for commercial structures, including parking areas 75 feet from the traveled portion of the nearest roadway and 25 feet from the side and rear property lines.
  6. In accordance with Sub-Chapter III, Section 10.26, E of the Commission's Land Use Districts and Standards; the proposed tower and accessory structures does not exceed the 30% maximum lot coverage.
  7. In accordance with Section 10.26,F of the Commission's Land Use Districts and Standards, the telecommunication tower may exceed the Commission's maximum 100 foot height restriction for structures because the proposed structure does not contain floor area, and the proposed height of approximately 195 feet (199 feet with antennas) is necessary for telecommunication coverage.
  8. If carried out in compliance with the Conditions below, the proposal will meet the Criteria for Approval, section 685-B(4) of the Commission's Statutes, 12 M.R.S.A.

**Therefore, the staff approves the application of Bay Communications II, LLC with the following Conditions:**


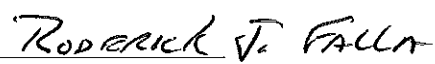
1. The Standard Conditions for Development Permits revised 04/2004, a copy of which is attached.

2. The General Standards for Clearing (ver. 10/00), a copy of which is attached. Clearing should be kept to the minimum required to safely construct and maintain the telecommunication tower site.
3. The General Standards for Filling and Grading with Guidelines for Vegetative Stabilization (ver. 10/00), a copy of which is attached.
4. The General Standards for Roads and Water Crossings (ver. 7/07), a copy of which is attached.
5. The access road shall either be constructed above the existing ground surface with minimal ditching or, if not constructed above the existing ground surface, shall be constructed with frequent ditch turnouts on the steep grade sections of the road. The access road shall be designed and maintained to avoid excessive runoff and erosion into Rt. 11.
6. All areas of disturbed soil must be promptly seeded and stabilized.
7. Should any significant erosion or sedimentation occur during the construction or maintenance of the facility, including repairs to the access road network, the applicant shall contact the Land Use Planning Commission immediately, notifying it of the problem and describing all proposed corrective measures.
8. The permitted structures must be centered within the leased lot and maintain a minimum set back of at least 25 feet from the leased property boundary lines.
9. All debris generated as a result of the permitted activities shall be removed from the lot and disposed of in a proper manner, in compliance with applicable state and federal solid waste laws and rules.
10. The telecommunication tower shall be made available for co-location of other antenna (or compatible systems) in accordance with the design and load capacity of the tower structure.
11. To minimize bird collisions with the telecommunication tower, the permittee shall consider applicable design recommendations that limit bird mortality developed by "Partners in Flight" and adopted by Maine Department of Inland Fisheries and Wildlife.
12. The tower shall be dismantled and removed from the site when the tower is unused for an extended period of time.
13. The tower structure shall be installed and maintained an appropriate color for the structure to best blend with the skyline.
14. With the exception of signage required by the FAA or the FCC, no signage or advertisements shall be installed on the tower above 20 feet from ground elevation.
15. The permittee shall comply with all Federal Aviation Administration (FAA) requirements for the telecommunications tower authorized by this permit.

16. Issuance of this permit does not obviate the need for any other federal, state or local approvals.

This permit is approved upon the proposal as set forth in the application and supporting documents except as modified in the above stated conditions, and remains valid only if the permittee complies with all of these conditions. Any variation from the application or the conditions of approval is subject to prior Commission review and approval. Any variation undertaken without Commission approval constitutes a violation of Land Use Planning Commission law. In addition, any person aggrieved by this decision of the staff may, within 30 days, request that the Commission review the decision.

DONE AND DATED AT GREENVILLE, MAINE, THIS FIFTH DAY OF SEPTEMBER, 2014.

for:    
Nicholas D. Livesay, Executive Director